CHOOA E PEK & ORS.

v.

UN SIANG MEAD & ORS.

FEDERAL COURT, KUCHING
LEE HUN HOE CJ (BORNEO)
SYED OTHMAN FJ
ABDUL HAMID OMAR FJ
[CIVIL APPEAL NO. 52 OF 1980]
29 JANUARY 1982

ADMINISTRATIVE LAW: *Annual general meeting of association - Unruly and disorderly - Adjournment by Chairman - Whether proper - Vote of no confidence - Appointment of new Chairman and protem committee - Continuation of meeting - Whether null and void.*

When the annual general meeting of the Kheng Chew Association, held on 12 December 1971, became unruly and disorderly, the Chairman adjourned the meeting though he was requested by some members to continue with it. After the members of the committee had left, those members remaining decided to continue with the meeting. A vote of no confidence was passed. A new Chairman was appointed and a pro-tem committee elected and some business transacted. The respondents applied for certain declarations and an injunction, which were granted by the trial Judge. The appellants appealed.

Held:

[1] The 1959 Rules of the Association should have been applied but the error of the trial Judge in applying the 1966 and 1971 Rules would not affect the outcome of the case.

[2] The Chairman had power to adjourn the meeting. A Chairman has power to adjourn a meeting which has become unruly and disorderly without ascertaining the sense of the meeting whether it should be continued. [*Dias & Ors v. Alfonso & Ors.* AIR [1934] Sind. 180, applied; *Tan Kah Wich & Ors. v. Datuk Phua Cheng Leong & Ors.* [1979] 2 MLJ 259, distinguished].

[3] The vote of no confidence was null and void.

[4] The election of the pro-tem committee and all proceedings subsequent to the adjournment, except the appointment of the Chairman, were null and void.

[Appeal and cross-appeal dismissed.]

Cases referred to:
Dias & Ors. v. Alfonso & Ors. [1934] AIR Sind 180
Tan Kah Wich & Ors. v. Datuk Phua Cheng Leong & Ors. [1979] 2 MLJ 259

Other sources referred to:
Daly's *Club Law*, 6th Edn., p. 296

For the appellants - Karpal Singh (Chan Kay Heng with him); M/s. Chan & Chan
For the respondents - Chong Siew Chiang; M/s. Chong Brothers

JUDGMENT

Lee Hun Hoe CJ (Borneo):

On 12 December 1971 the Kheng Chew Association held its annual general meeting at its premises at No. 38, Carpenter Street, Kuching. More than 90 members attended the meeting which was chaired by the Vice-Chairman as the 1st plaintiff/1st respondent had not completely

recovered from his foot ailment to be able to preside over the meeting. After the Chairman gave his speech questions were asked about various matters such as finance, previous minutes, rules and dismissal of members for failing to pay monthly subscriptions. It would seem that there were heated arguments on the last matter. Some members banged tables with bottles and glasses. The situation was confusing. The meeting had become unruly and disorderly and the Chairman called for order but was unable to control it. So he pressed the bell and adjourned the meeting. Later the police came but no one knew who called the police. When the police left the premises members of the committee and other members also left. Before that some members asked the Chairman to continue with the meeting but he was not prepared to do so. After the members of the committee left those members remaining in the premises decided to continue with the meeting. The five defendants/appellants were elected as members of the pro-tem committee. It would seem that 2nd defendant/2nd appellant stated in evidence that

> before the appointment of the pro-tem committee the members had passed a vote of no confidence on the committee. The 1st defendant conducted the meeting.

He went on to say that

> after the Chairman left, 1st defendant chaired the meeting and some business were transacted. I don't know whether any minutes of the meeting was recorded. There was no record book and no members signed their attendance at the pro-tem meeting.

The learned Judge delivered a short oral judgment in the form of notes. He accepted that the meeting on 12 December 1971 was unruly and disorderly by the fact that police had to be summoned and the meeting had to be stopped. He considered that after the unruliness ceased the Chairman should accede to the request of members to resume the meeting in order to complete the business of the day. He further considered that members had the right at common law to appoint a new Chairman to complete the agenda. According to the learned Judge the question of validity of the vote of no confidence and the appointment of the pro-tem committee would depend on the Rules of the Association. For authority he cited the decision of this Court in *Tan Kah Wich & Ors. v. Datuk Phua Cheng Leong & Ors.* [1979] 2 MLJ 259. He stated that the Rules applicable to the meeting on 12 December 1971 were the Rules approved by the Registrar in July 1971. In his view the vote of no confidence was null and void as it was in breach of r. 7(6) as no proper notice was given. Similarly, the election of the pro-tem committee was bad and therefore null and void. Except for the appointment of the new Chairman other proceedings would be null and void. Accordingly, he made the following:

(1) A declaration that the purported vote of no confidence alleged to have been passed on 12 December 1971 against the plaintiffs as members of the Executive and the Supervisory Committees of the Kuching Kheng Chew Association, Kuching, was and is invalid null and void and of no effect.

(2) A declaration that the purported pro-tem committee of the Kuching Kheng Chew Association Kuching, and the purported election of the defendants above-named to the purported pro-tem committee on 12 December 1971 were and are invalid null and void.

(3) A declaration that all proceedings taking place after the adjournment by the Chairman of the general meeting of the Kuching Kheng Chew Association, Kuching, held on 12 December 1971 were and are invalid null and void except for the Appointment of a Chairman.

(4) An injunction restraining the defendants from acting or holding themselves or himself out as members or member of the pro-tem committee and from otherwise by themselves their servants or agents from intermeddling in the Association's business for the management of its affair in the name of the purported pro-tem committee **And it is Further Ordered** that the defendants do pay costs to the plaintiffs.

(5) An order dismissing the defendants' Counter-claim with costs to the plaintiffs.

(6) An order that both costs are to be taxed.

The parties agreed that the 1959 Rules should apply at the time. The learned Judge was wrong to apply the 1966 Rules and the 1971 Rules. The former was cancelled and the latter not applicable. However, the error would not affect the outcome of the case.

In their letter to the Registrar dated 14 December 1971 defendants stated that the vote of no confidence was passed for the following reasons:

(1) No minutes of the previous year's Annual General Meeting was circulated to members or produced at the meeting and the Committee nevertheless chose to approve the minutes.

(2) No Statement of Accounts of the Association were produced and again the Treasurer's Report was approved and adopted.

(3) The Association's amended rules were adopted by the Committee without having held a General Meeting of the Association to decide on the adoption of the rules.

In this evidence the 2nd plaintiff (PW1) stated clearly that the Treasurer's Report and minutes of the previous meeting which were circulated to members before the meeting were not challenged. Furthermore, para. 4 of the Defence and Counterclaim stated if Mr. Chang Sui refused to comply with defendants' request to continue with the meeting they would cast a vote of no confidence. This is clearly different from the reasons given to the Registrar.

On the question of amendment of the rules and the cancellation of welfare fund the Chairman stated that these were carried on at the direction of the Registrar of Societies. The new rules though approved had not been registered and put into force. These must be approved by members at the annual general meeting. Despite the explanation given by the Chairman it would seem that 2nd defendant was not satisfied.

It would be difficult if a Chairman has no power to adjourn a meeting which has become unruly and disorderly. The better view is that he had such power. *Dias & Ors. v. Alfonso & Ors.* [1934] AIR Sind 180 makes clear that the chairman has the power to adjourn a meeting which is so disorderly that no business can be transacted thereat. He need not ascertain the sense of the meeting whether the meeting should be adjourned or not. It should be kept in mind that the Kheng Chew Association is merely a member's club with the objects of establishing unity and promoting better relationship and welfare of its members. Reference may be made to Daly's *Club Law*, 6th Edn., p. 296 in connection with Procedure at Meeting as follows:

> Disorder: If the orderly conduct of the meeting becomes, in the view of the Chairman, impossible because of members' misbehavior, he may declare the meeting adjourned and leave the chair. If he does this his place cannot be taken by another Chairman for the remainder of the business; any attempt to continue the proceeding will be invalid. See also Blackwell's *Law of Meetings*, 9th Edn., p. 57.

Defendants contended that the meeting was not so disorderly for it to be discontinued. At one stage it was disorderly but the disorder had been restored. Defendants conceded that the procedure adopted in passing the vote of no confidence was irregular.

The facts in *Tan Kah Wich & Ors. v. Datuk Phua Cheng Leong & Ors.* [1979] 2 MLJ 259 are clearly distinguishable from the present case. In that case this Court was dealing with a situation where the President's action in adjourning the meeting was clearly wrong. There the President refused to allow voting to decide on the site for the electrical substation by walking away and saying the meeting was adjourned. In the present case the meeting has become so unruly and disorderly necessitating the presence of the police that the Chairman has no alternative but to adjourn the meeting.

The pro-tem committee acted on the assumption that the Chairman was wrong not to continue with the meeting. We cannot see how the pro-tem committee has the power to deal with any matter except those that were not completed by the Chairman prior to the adjournment. The function of the pro-tem committee ended with the meeting. The action of the pro-tem committee was clearly wrong in the circumstances and the proceedings conducted by them were therefore null and void.

It is unfortunate we do not have the benefit of a full judgment, but having regard to the evidence we are satisfied that the learned Judge was right in his decision to grant the declarations and to dismiss the counterclaim and to give both costs to the plaintiffs. Accordingly, we would dismiss both the appeal and cross-appeal with costs. Deposit to respondents on account of taxed costs.

Also found at [1983] 2 CLJ 61